HONOURABLE SRI JUSTICE B. SESHASAYANA REDDY

WRIT PETITION No.16591 OF 2003

Dated 23-11-2005

Between :

1. Ketharaju Kistaiah, son of Shankaraiah, Hindu, aged about 65 years, Cultivation, resident of Thangedpally (v) Choutuppal (M), Nalgonda District.

Petitioner.

And:

1. The Joint Collector, Nalgonda, Nalgonda District and others.

…Respondents.

ORDER :

This writ petition has been filed by Ketharaju Kistaiah assailing the order passed by the Joint Collector, Nalgonda-1st respondent on 24-2-2003 in case No.F2/JC/Inams/21/2001.

2. The petitioner claims to have obtained occupancy certificate in respect of Ac.16-25 cents comprising survey Numbers 722 and 725. The occupancy certificate issued in his favour by the Revenue Divisional Officer, Bhongiri came to be challenged by the respondents 3 to 21 herein by filing an appeal before the Joint Collector, Nalgonda. The appeal came to be allowed setting aside the occupancy certificate issued by the Revenue Divisional Officer, Bhongiri in respect of S.Nos.723 and 725. The relevant portion of the order passed by the Joint Collector, Nalgonda reads as follows :

> “In regard to above issue, it is seen from the original Khasra Pahani of Tangedepalli village for 1954-55, the Sy. Nos.723 & 725 are classified as Patta lands. Verified the Inamdar Register of Thangedepalli village

for 1989-90 prepared by Mandal Revenue Officer, Choutuppal. The suit Sy.Nos.723 & 725 are not found in the register. It is seen from the true extract of Sethwar also the Sy. Nos. are recorded as Sarkari lands, but not inam lands.

Verified the true extract of Khasra Pahani produced by the counsel for Respondents with the original Khasra Pahani of Thangedepalli village. In original Khasra the Sy. Nos.723 & 725 are recorded as patta lands, whereas in the true extract the lands were mentioned as Choutha Inam lands. In regard to the entries in Col. No.13, the names in the true extract are different from the names existing in the original Khasra. The true extract of Khasra was issued in different years with over writings i.e., 1st page issued in 1973 and 2nd page issued in 1977. It appears from the above that the Khasra extract was a manipulated one and prepared for getting benefit by the Respondents.

The Revenue Divisional Officer, Bhongir has stated that the original file bearing No.P/2872/97 was not traceable. However, it is seen from the available record, ie., copy of Sethwar, Original Khasra Pahani and Inamdasr Register it is clearly established that the suit Sy.Nos.723 and 725 are not Inam lands. The lands are Patta lands. Hence the Occupancy Rights Certificate issued in respect of the Sy.No.723 & 725 are liable to be cancelled.

In view of the above the appeal is allowed. The Occupancy Rights Certificate issued by the RDO, Bhoingir in respect of Sy.No.723 & 725 situated at Thangedepalli village of Choutuppal Mandal in favour of Respondents are hereby cancelled. Further the RDO, Bhongir is also directed to initiate action against the person responsible for missing of file bearing No. P/2872/97 and report compliance."

Assailing the order of the Joint Collector, Nalgonda, the petitioner has chosen to approach this Court by invoking jurisdiction of Article 226 of Constitution of India.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 3 to 21 and the learned Government Pleader appearing for the respondents 1 and 2.

4. The learned counsel for the petitioner challenged the order of the Joint Collector on two grounds. Firstly, the appeal is barred by limitation. Secondly, no opportunity was given to the petitioner to go through the original records which are referred to by the Joint Collector in the order impugned in the writ petition.

5. It appears that the petitioner has not raised any objection before the appellate authority that the appeal filed by the respondents 3 to 21 herein is barred by limitation. Even assuming that such a point is raised, it can be repelled by referring

to para 2 of the order impunged in the writ petition wherein it is stated that the copy of the order passed by the Revenue Divisional Officer granting occupancy certificate in favour of the petitioner has not given to the respondents on the ground of missing of the original file. Such is the situation, the appellate authority is justified in entertaining the appeal.

6. With regard to the 2nd ground, the memorandum of appeal presented by the respondents 3 to 21 before the joint Collector details documents on which they placed reliance. Para 4 of the memorandum of appeal reads as follows :

> "That the documents of Khasra Pahani for 1954-55, Pahani for 1979-80 and Inam extract for 1990-91 clearly shows that the lands in dispute are not inam lands."

7 . If the petitioner intended perusal of the original documents, nothing prevented to seek permission of the Joint Collector for perusal of the same. Since such request is not made by the petitioner before the Joint Collector-appellate authority, he cannot be permitted to contend of his not providing an opportunity to go through the original records.

8. In the result, the writ petition is devoid of merits and the same is dismissed. No costs.

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Justice B.SESHASAYANA REDDY

Date : 23-11-2005.

Dvs

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